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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,733

12/30/2003

Dwight P. Morejohn

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7537

36154 7590 10/12/2007
LAW OFFICE OF ALAN W. CANNON
942 MESA OAK COURT
SUNNYVALE, CA 94086

EXAMINER

O'CONNOR, CARY E

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

10/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,733

Applicant(s)

MOREJOHN ET AL.

Examiner

Cary E. O'Connor

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,11,13-30,44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) 2,16-19,21 and 23-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,11,13-15,20,22,44 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Line 2 recites "screw-type mechanism. The addition of the word "type" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. MPEP 2173.05(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicholas et al (5,967,974). Nicholas shows an access system comprising upper and lower spreader portions 126, 112, the spreader portions being positioned relative to each other, the upper spreader portion comprising a hook 132 mounted to a retraction mechanism actuator via a swivel 128, wherein the lower portion comprises a flat depressor surface.

Claims 11, 13, 20 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips (4,865,019). Phillips shows an access system comprising upper and lower spreader portions 12, 13, the spreader portions being positioned relative to each other, the upper spreader portion comprising a pair of hooks 48 mounted to a retraction mechanism actuator via a swivel (loop 47), wherein the lower portion

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comprises a flat depressor surface. As to claim 13, the hooks include a lifting surface (see Figure 4). As to claim 20, the upper spreader portion includes a retraction mechanism to lift the tissue.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 13-15, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicholas et al (5,967,974) in view of Phillips (4,865,019). The system of Nicholas does not include a pair of hooks on the upper spreader portion. Phillips shows an access system comprising a pair of hooks mounted to a retraction mechanism. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the upper spreader portion of Nicholas with a pair of hooks, as taught by Phillips, in order to spread the forces evenly along the incision. As to claim 14, note the first and second side portions of Nicholas extending between the upper portion and the lower portion. As to claim 22, note the screw mechanism 120 of Nicholas for lifting and retracting.

Response to Arguments

Applicant's arguments filed June 22, 2007 have been fully considered but they are not persuasive. Applicant asserts that the hook 112 of Nicholas is not flat. Applicant attention is directed to Figure 17 which shows the end of the hook as being flat. .


Applicant's arguments with respect to claim 11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4715. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Cary E. O'Connor
Primary Examiner
Art Unit 3732

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